

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

JOHN PAUL ARIAS,	)	4:06CV3208
	)	
Petitioner,	)	ORDER ON JOINT MOTION TO
	)	WITHDRAW, DOCUMENT 14;
v.	)	APPLICATION FOR APPOINTMENT OF
	)	COUNSEL, DOCUMENT 16; MOTION TO
ESTHER CASMER, et al.,	)	FILE OUT OF TIME, DOCUMENT 18;
	)	OBJECTION TO MOTION TO FILE OUT
Respondents.	)	OF TIME, DOCUMENT 19; AND MOTION
	)	FOR EVIDENTIARY HEARING,
	)	DOCUMENT 17

Linda L. Willard has moved to withdraw as attorney for the respondents and Matthew A. Works has entered his appearance. The motion, document 14, will be granted.

The petitioner has filed an application for appointment of counsel, saying that he no longer has the assistance of Legal Aide Steve Jacob to assist him but he, the petitioner, has concern that he may be terminated as an employee of the library and denied access to the library. I find that appointment of counsel is a reasonable course to be taken and the application, document 16, will be granted.

The respondents have filed a motion to file out of time, document 18, citing a shift in counsel of the Attorney's General Office in the Inmate Litigation Division, resulting in some confusion of communication. Reasonable grounds have been shown for filing an answer to the petition out of time and the respondents will be given a specific date upon which an answer is to be filed. The objection to that motion will be denied.

Document 17 is a motion for an evidentiary hearing, asking that the court set a hearing and then issue the writ and order the petitioner paroled in view of the fact that the defendants are in default. Although an evidentiary hearing in time may indeed be necessary, the proper procedure under the circumstances shall be to deny the motion, document 17, obtain an answer to the petition, get counsel appointed for Mr. Arias and get both sides ready for such a hearing.

IT IS ORDERED that:

1. the Joint Motion to Withdraw, document 14, is granted and Linda L. Willard has no further obligations in representing the respondents;

2. the application for appointment of counsel, document 16, is granted and the Federal Public Defender for the District of Nebraska is appointed to represent the above-named petitioner in this matter. In the event that the Federal Public Defender accepts this appointment the Federal Public Defender shall forthwith file a written appearance in this matter. In the event the Federal Public Defender should decline this appointment for reason of conflict or on the basis of the Criminal Justice Act Plan, the Federal Public Defender shall forthwith provide the court with a draft appointment order (CJA Form 20) bearing the name and other identifying information of the CJA Panel attorney identified in accordance with the Criminal Justice Act Plan for this district;
3. the motion to file out of time, document 18, is granted and the respondents shall have until January 31, 2007, to file an answer to the petition;
4. the objection to motion to file out of time, document 19, is overruled; and
5. the motion for evidentiary hearing, document 17, is denied.

The petitioner's objection to the Order on Initial Review will be ruled upon when I have had an opportunity to review it carefully.

Dated January 24, 2007.

BY THE COURT

s/ Warren K. Urbom  
United States Senior District Judge